

PMOS EXHIBIT 9

EXHIBIT 15 OF RYAN DIETZ'S
DECEMBER 6, 2018 DEPOSITION:
PLAINTIFF'S 2017 LINKEDIN/EMAIL
EXCHANGES WITH RYAN DIETZ



Electronic exchanges from 2017 between plaintiff and Ryan Dietz regarding the royalty split issue.

Aug 1

Hi Ryan,

I hope all is well with you and you are enjoying your role at Children's TIDO. I heard while in Boston for ISSCR that Derrick Rossi is closing his lab and moving on to new pastures. At this point I would like to gain an understanding of the terms under which the IP I helped develop in his lab have been commercialized. The last time we communicated on this (several years ago) you indicated that I would need to execute a Non-Disclosure Agreement before you could share the details, and would be happy to do so at this time. Please let me know how we should proceed.

Best regards,

Luigi Warren

Tel: (617) 275-1489

11:59 AM



Hi Luigi. Thanks for reaching out. I need to contact you about an administrative matter so would suggest we find time for a call. When works for you? Please email me directly at ryan.dietz@childrens.harvard.edu

12:17 PM

luigi.warren@outlook.com

From: Luigi Warren <luigi.warren@outlook.com>
Sent: Friday, November 03, 2017 7:18 AM
To: Dietz, Ryan
Subject: Re: phone call [EXTERNAL] - CMCC 2085

We'll have to see what the court decides.

From: Dietz, Ryan
Sent: Friday, November 3, 2017 6:59 AM
To: Luigi Warren
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Luigi,

All IP policies are drafted to allow changes to be made by the authorized individuals of the governing boards of the institutions. Since IDI Board Members approved the merger into BHC, then changing from the IDI policy to the BCH policy was properly approved by IDI and is the governing policy at the time of the Moderna license.

Regards,
Ryan

From: Luigi Warren [mailto:luigi.warren@outlook.com]
Sent: Thursday, November 02, 2017 4:44 PM
To: Dietz, Ryan
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Ryan,

My thoughts are that we are not making progress here. Quite the reverse, in fact. The pertinent question for the purposes of the analysis is to ascertain if there was any legally sound basis for IDI to promise to BCH what they had already promised to me as employee-inventor. I believe the answer is 'no.' Again, I will give you another week on this. If the BCH position remains that you are not obligated to honor the promises made me in the IDI policy, I will bring the issue before the courts for resolution.

Regards,

Luigi

From: Dietz, Ryan [mailto:Ryan.Dietz@childrens.harvard.edu]
Sent: Friday, October 27, 2017 7:23 AM
To: Luigi Warren <luigi.warren@outlook.com>
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Hi Luigi,

First, after inquiring, we are not able to provide the Moderna license agreement. This is policy based; we do not share agreements with investigators. Please note, your rights to revenue come from the IP policy.

Second, I received the internal analysis recently and have provided details below. This is in line with the history as I understand it and also is my independent opinion. This determination is based on a legal analysis and I have no ability to determine which policy applies.

Factual Understanding:

- The invention described in TIDO's case files as CMCC-2085 was disclosed to TIDO on or around August 13, 2008.
- Children's Medical Center Corporation (CMCC) and IDI entered into an Affiliation Agreement on or around February 20, 2009.
- Section 6.5 of the Affiliation Agreement deals with handling intellectual property and states that all IDI intellectual property not previously licensed as of the Effective Time of the Affiliation Agreement (February 20, 2009) shall be subject to the policies and procedures of CMCC. Licenses entered into at that time and thereafter, would be handled in accordance with CMCC's policies.
- CMCC and Moderna entered into the exclusive license to CMCC-2085 on or around December 21, 2010.

Conclusion: CMCC's intellectual property policy in effect when the Moderna licensed was signed will govern revenue resulting therefrom.

Remember, we are trying to implement a new revenue share that will allow for some revenue to go for lab research, but also will be more advantageous for the inventors (as described in previous letter and explanatory emails).

Please let me know your thoughts.

Regards,
Ryan

From: Luigi Warren [<mailto:luigi.warren@outlook.com>]
Sent: Thursday, October 26, 2017 12:31 PM
To: Dietz, Ryan
Cc: Rossi, Derrick; alt@enders.tch.harvard.edu
Subject: FW: phone call [EXTERNAL] - CMCC 2085

Ryan,

I haven't heard from you on the royalty distribution issue or my follow-up email regarding the terms of the Moderna deal. Have gone over this matter with several attorneys now and they all concur BCH is obligated by the promises made in the IDI policies. I'll give you another couple of weeks but if we don't have a resolution by then I will ask the courts to adjudicate the question.

Regards,

Luigi

From: Luigi Warren
Sent: Thursday, October 12, 2017 11:57 AM

To: Dietz, Ryan <Ryan.Dietz@childrens.harvard.edu>
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Hi Ryan,

As it is taking a while to resolve this issue of the exact percentages due to the inventors, could we pick up the original question? You indicated when we spoke back in August that you could share with me the terms of the licensing agreement with Moderna. How should we best proceed to address this?

Best regards,

Luigi

From: Dietz, Ryan [<mailto:Ryan.Dietz@childrens.harvard.edu>]
Sent: Thursday, September 07, 2017 1:07 PM
To: Luigi Warren
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Luigi,

Thank you.

Diane left BCH a few years ago, but I recall several of these discussions.

To get current legal review on this, I would appreciate if you could forward the letter that Diane sent.

Regards,
Ryan

From: Luigi Warren [<mailto:luigi.warren@outlook.com>]
Sent: Thursday, September 07, 2017 3:51 PM
To: Dietz, Ryan
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Hi Ryan,

I recall being informed verbally about the 1/3 inventors' share back when I was in Derrick's lab, and you confirmed that split in an email dated Mar 8, 2011 in response to my query, quoting directly from the policy document. Dianne McCarthy, BCH's Chief Counsel for Research Affairs, also sent me a copy of the full IDI R&D Policy giving the split in a letter requesting my execution of an assignment form dated March 22, 2011. I also had several other communications with you and with IDI's external counsel (Nixon Peabody) where the IDI R&D Policy was cited as controlling with respect to IP-related matters.

Best regards,

Luigi

From: Dietz, Ryan [mailto:Ryan.Dietz@childrens.harvard.edu]
Sent: Thursday, September 07, 2017 12:27 PM
To: Luigi Warren <luigi.warren@outlook.com>
Cc: Rossi, Derrick <Derrick.Rossi@childrens.harvard.edu>
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Luigi,

I am trying to understand what others have communicated to you regarding the IDI policy by IDI/BCH. Can you clarify what information you received so I can know how to proceed here at BCH?

Regards,
Ryan

From: Luigi Warren [mailto:luigi.warren@outlook.com]
Sent: Monday, August 21, 2017 10:50 AM
To: Dietz, Ryan
Cc: Rossi, Derrick
Subject: Re: phone call [EXTERNAL] - CMCC 2085

Ryan,

Thanks for clarifying the royalty split tiers question on the phone last week. Just to sum up the state of play, the #1 concern I have about signing off on the custom split agreement is that it would in effect ratify an inventor's share which is still significantly lower than the 33 1/3% promised in the IDI Development Policy. For now, I need to better understand the merits of the claim that the 1992 BCH policy overrides those promises. I appreciate your offer to have the BCH lawyers speak to the issue and look forward to those communications. In the meantime thanks again for your help, and enjoy your vacation!

Best regards,

Luigi

From: Dietz, Ryan
Sent: Thursday, August 17, 2017 12:16 PM
To: Luigi Warren
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Yes. 2 or 3pm ET tomorrow?

Regards,
Ryan

From: Luigi Warren [mailto:luigi.warren@outlook.com]
Sent: Thursday, August 17, 2017 1:38 PM
To: Dietz, Ryan
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Shall we set up another call?

-luigi

From: Dietz, Ryan [<mailto:Ryan.Dietz@childrens.harvard.edu>]
Sent: Thursday, August 17, 2017 10:35 AM
To: Luigi Warren <luigi.warren@outlook.com>
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Luigi,

The policy that covers the Moderna license is actually the BCH policy (detailed in the spreadsheet previously provided) that was in existence at the time of the deal. This is because of certain terms of the IDI/BCH merger agreement executed in 2009. So deals done after 2009 do not use the IDI policy (revenue split 1/3, 1/3, 1/3).

I am happy to chat with you if this is unclear.

The BCH policy does have tiers and differs depending on whether inventors remain employed at BCH. I attached the policy page showing the structure.

Regards,
Ryan

From: Luigi Warren [<mailto:luigi.warren@outlook.com>]
Sent: Tuesday, August 15, 2017 1:29 PM
To: Dietz, Ryan
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Thanks, Ryan. Am I correct in my understanding that under the IDI policy the inventors' share was a straight 33 1/3% and under the current (2015) BCH/TIDO policy it is a straight 30%, with no tiers in either case?

-luigi

From: Dietz, Ryan [<mailto:Ryan.Dietz@childrens.harvard.edu>]
Sent: Tuesday, August 15, 2017 10:20 AM
To: Luigi Warren <luigi.warren@outlook.com>
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Luigi,

Let me know if there are other questions.

Regards,
Ryan

-
1. The items you list designate internal BCH funds which receive revenue other than the inventors.

- GRE is general research endeavor; PCMM is the program that IDI become when it joined BCH; DEPT is the department with which the PCMM belongs; IPO designates the Intellectual Property Office (now called TIDO) which handles all IP and licensing matters.
- 2. Regarding the cumulative nature of the revenue, I have attached a scan showing how it functions under the current policy. Basically, there is a drop in the inventor's share from 35% to 25% after cumulative revenues pass \$500,000. The proposal we are intending to implement keeps the inventors at 27.5%. Since sizable revenues can be foreseen, 27.5% vs 25% would be significantly better for the inventors.

From: Luigi Warren [<mailto:luigi.warren@outlook.com>]
Sent: Monday, August 14, 2017 3:37 PM
To: Dietz, Ryan
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Ryan,

A couple of immediate questions to help me understand this:

1. What are GRE, PCMM, DEPT, GRE and IPO here?
2. Can you explain what you mean by "provides higher shares for inventors as cumulative revenues rise above ~\$800"?

Regards,

Luigi

From: Dietz, Ryan [<mailto:Ryan.Dietz@childrens.harvard.edu>]
Sent: Monday, August 14, 2017 12:15 PM
To: Luigi Warren <luigi.warren@outlook.com>
Subject: RE: phone call [EXTERNAL] - CMCC 2085

Luigi,

Sorry for delays.

I have attached 2 documents. One is the letter that will be signed and the other is an illustration of how the inventors will be better off with these splits. This is because the new revenue sharing model provides higher shares for inventors as cumulative revenues rise above ~\$800. Again, the main goal is to allow for a lag share, but the added benefit is that inventors receive more money as revenues rise.

There is a reasonably likelihood that BCH will receive significant value for the equity stake we hold, which could be in the millions of dollars. Therefore, the updated split will be better for you.

I am working on providing the agreement as well. I should know how to proceed on that matter tomorrow or Wednesday.

Please let me know if you have any questions or concerns. I would be happy to have a call to discuss any of the details.

Regards,

Ryan

From: Luigi Warren [<mailto:luigi.warren@outlook.com>]
Sent: Friday, August 11, 2017 4:33 PM
To: Dietz, Ryan
Subject: RE: phone call [EXTERNAL]

Hi Ryan,

Thanks for keeping me posted and have a good weekend!

-luigi

From: Dietz, Ryan [<mailto:Ryan.Dietz@childrens.harvard.edu>]
Sent: Friday, August 11, 2017 1:20 PM
To: Luigi Warren <luigi.warren@outlook.com>
Subject: RE: phone call [EXTERNAL]

Luigi,

I wanted to update you that I will have the letter and example spreadsheet that we discussed for you Monday.

My apologies for the delays.

Regards,
Ryan

From: Luigi Warren [<mailto:luigi.warren@outlook.com>]
Sent: Wednesday, August 02, 2017 12:09 PM
To: Dietz, Ryan
Subject: Re: phone call [EXTERNAL]

2 PM EST / 11 AM PST Friday is good for me. I look forward to speaking with you then. -luigi

From: Dietz, Ryan
Sent: Wednesday, August 2, 2017 7:11 AM
To: Luigi Warren
Subject: RE: phone call [EXTERNAL]

Sorry I missed this yesterday afternoon.

Best if we schedule something. How about 12, 1 or 2pm ET Friday?

Regards,
Ryan

From: Luigi Warren [<mailto:luigi.warren@outlook.com>]
Sent: Tuesday, August 01, 2017 3:51 PM

To: Dietz, Ryan
Subject: phone call [EXTERNAL]

Hi Ryan,

Anytime this afternoon would be good for a call. I can be reached at (617) 275-1489.

Best regards,

Luigi

From: Luigi Warren [<mailto:luigi.warren@outlook.com>]
Sent: Tuesday, August 01, 2017 3:51 PM
To: Dietz, Ryan
Subject: phone call [EXTERNAL]

Hi Ryan,

Anytime this afternoon would be good for a call. I can be reached at (617) 275-1489.

Best regards,

Luigi